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SUBJECT: DUTCH APPEALS COURT ALLOWS USE OF INTEL INFORMATION
IN TERRORIST CASES

REF: (A) 03 The Hague 3087; (B) 03 The Hague 1859

¶11. In December 2002, a Rotterdam court acquitted four men who, the Government alleged, were involved in a plot to bomb the U.S. Embassy in Paris. The court refused to allow the prosecution to use information supplied by the intelligence service, AIVD, as evidence. On June 21, 2004, The Hague Appeals Court reversed the lower court's acquittal of Jerome Courtailler and Abdelghani Rabia and sentenced them to six and four-year jail terms respectively. The appeals court found the defendants did not plan an attack but convicted them for being involved in an international criminal organization that was planning an attack. Courtailler and Rabia were also convicted of involvement in another criminal organization that, among other activities, engaged in the trade of forged passports. The other two defendants were also convicted of the lesser offense of participating in a criminal organization trading in forged passports. They were sentenced to 18 and 12-months in jail.

¶12. At the time of the court's decision, Courtailler and Rabia were out of the country - Courtailler allegedly in France and Rabia in Algeria. Arrest warrants were issued for both men. Courtailler turned himself in to Dutch authorities June 24 and has begun serving his sentence.

¶13. The pivotal question before the appeals court concerned the validity of using intelligence information by the prosecution - both in the investigation and in court as evidence. Since the Rotterdam court's decision in 2002, Dutch prosecutors have been reluctant to pursue cases based in large part on information coming from AIVD. In October 2003, the Government arrested but then quickly released another four men suspected of preparing a terrorist attack because there was insufficient evidence independent of intelligence sources to detain them (Reftel A). Agreeing with the Government's argument, the appeals court held AIVD information was "a very good" base for starting a criminal investigation or issuing arrest or search warrants. It also allowed the use of "part" of AIVD intelligence as evidence under certain circumstances (i.e., the information must be able to be verified).

¶14. According to a Justice Ministry source, Minister Donner is pleased with the decision, seeing it as a complement to his efforts to improve law enforcement tools to combat terrorism. He plans to continue to press parliament to approve pending legislation making membership in a terrorist organization and conspiracy to commit a terrorist act separate offenses as well as recruitment for the jihad punishable under the criminal code (Reftel B).

¶15. COMMENT: This is the first successful conviction of individuals for suspected terrorist activity by prosecutors in the Netherlands. While the defendants can appeal to the High Court, the prosecutors are confident this ruling will stand. Prosecutors have indicated to Embassy officials they intend to actively utilize the court's ruling to strengthen their counterterrorist efforts. END COMMENT.

SOBEL